



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



William Hartley  
d/b/a Hartley Industries Inc.  
PO Box 521  
Meredith, NH 03253

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
No. AF 02-028**

**August 29, 2002**

**I. INTRODUCTION**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to William Hartley, pursuant to RSA 482-B and Env-C 616. The Division is proposing that fines totaling \$6,889.00 be imposed against William Hartley for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. PARTIES**

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. William Hartley is an individual doing business as Hartley Industries, Inc. and having a mailing address of P.O. Box 521, Meredith, NH 03253.

**III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS**

1. RSA 482-B regulates water well contractors and pump installers and establishes the NH Water Well Board ("Board"). Pursuant to rulemaking authority conferred by RSA 482-B:4, the Board has adopted rules to implement this regulatory program (We 100 to 1000, "Water Well Rules"). Under RSA 482-B:8 and :16, the Department of Environmental Services ("DES") has concurrent authority with the Board to enforce RSA 482-B and the Water Well Rules.
2. RSA 482-B:16, II authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 for each offense for violations of RSA 482-B or of any rule adopted or license issued under that statute. Pursuant to rulemaking authority contained therein, the Commissioner has adopted Env-C 616 to establish the schedule of fines for such violations.
3. RSA 482-B:10 and We 801 require a water well contractor to file a well completion report with the NH Water Well Board ("Board") within 90 days following completion of the well.

4. Env-C 616.02(e) specifies a fine of \$1.00 per day for each calendar day after 90 days following completion of the well, up to \$100.00 per report, for failing to file a well completion report in accordance with RSA 482-B:10 and We 801.
5. Hartley Industries Inc., is a licensed water well contractor in the State of New Hampshire holding license #90.
6. On August 6, 2001, the Board sent William Hartley d/b/a Hartley Industries Inc. ("Hartley"), a letter of inquiry requesting the submittal of well completion reports for wells constructed from January 1, 2000 through July 19, 2000.
7. On October 3, 2001, the Board sent Hartley a letter requesting the submittal of well completion reports for all wells drilled by Hartley Industries Inc., under the authority of William Hartley during the year 2000 within 14 days.
8. On January 16, 2002, the Board sent notice to Hartley acknowledging that the Board had not received a response from its August 6 and October 3, 2001 letters and had not received the requested well completion reports.
9. On February 11, 2002, the Board sent notice to Hartley requesting his attendance at the next meeting of the Board on March 8, 2002.
10. On March 6, 2002, the Board received 34 well completion reports from Hartley for wells drilled from January and February 2000 and from May through August 2001.
11. On June 5, 2002, the Board held an administrative hearing to allow Hartley the opportunity to show cause why his water well contractor license should not be suspended for willful failure or refusal to file well completion reports. At the hearing, William Hartley submitted 40 well completion reports for the period September through December 2001 and May through June 4, 2002.

#### **IV. ALLEGED VIOLATIONS**

1. Hartley has violated RSA 482-B:10 and We 801 by failing to submit 34 well completion reports to the Water Well Board, within 90 days of completion, for the wells referenced in paragraph #10 above. All of the reports were submitted more than 100 days after the 90 day reporting period following completion of the well. Env-C 616.02(e) specifies a fine of \$100 per report, which equals \$3,400.00 for the 34 reports.
2. Hartley has violated RSA 482-B:10 and We 801 by failing to submit 36 well completion reports to the Water Well Board, within 90 days of completion, for the wells referenced in paragraph #11 above. Of the 36 reports submitted late, 26 of the reports were submitted more than 100 days after the 90 day

reporting period following completion of the well. Env-C 616.02(e) specifies a fine of \$100 per report, which equals \$2,600.00 for the 26 reports.

3. Hartley has violated RSA 482-B:10 and We 801 by failing to submit 10 well completion reports to the Water Well Board, within 90 days of completion, for the wells referenced in paragraph #11 above. Of the 36 reports submitted late, 10 of the reports, were submitted less than 100 days after the 90 day reporting period following completion of the well. Env-C 616.02(e) specifies a fine of \$1.00 per day for each calendar day after 90 days following completion of the well. The administrative fine is calculated for each well in the following table:

<u>Date of Completion</u>	<u>Date of Submittal</u>	<u># Days Late</u>	<u>Admin. Fine per Day</u>	<u>Admin. Fine per Report</u>
11-28-01	6-5-02	98	\$1.00	\$98.00
11-29-01	6-5-02	97	\$1.00	\$97.00
12-03-01	6-5-02	93	\$1.00	\$93.00
12-04-01	6-5-02	92	\$1.00	\$92.00
12-07-01	6-5-02	89	\$1.00	\$89.00
12-10-01	6-5-02	86	\$1.00	\$86.00
12-11-01	6-5-02	85	\$1.00	\$85.00
12-12-01	6-5-02	84	\$1.00	\$84.00
12-13-01	6-5-02	83	\$1.00	\$83.00
12-14-01	6-5-02	82	\$1.00	\$82.00
			Total	\$889.00

The total fine being sought is:  $\$3,400.00 + \$2,600.00 + \$889.00 = \$6,889.00$ .

#### V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than September 3, 2002 using the enclosed colored form.

1. If you would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.
2. If you choose to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it with payment of the fine to the DES Legal Unit.
3. If you wish to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to the DES Legal Unit and call the DES Legal Unit to indicate your

interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

## **VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES**

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence, applies in this case:**

The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

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\*\*\*\*\***IMPORTANT NOTICE**\*\*\*\*\*

**An administrative fine hearing is a formal hearing.** Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that William Hartley committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that William Hartley did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believes show that you did not commit the violation(s) or that otherwise support your position, should you bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

**If you wish to have an informal meeting to discuss the issues, you must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.**

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Information regarding this proposed fine may be made available to the public via the DES Web page ([www.state.nh.us.des](http://www.state.nh.us.des)). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-6330.

  
**COPY**  
Harry T. Stewart, P.E., Director  
Water Division

Enclosure (NHDES Fact Sheet #CO-2000)

cc: Water Well Board  
Anthony P. Giunta, P.G., Administrator, WSEB  
Gretchen C. Rule, DES Legal Unit  
Mark Harbaugh, DES Legal Unit  
DES PIP Office  
Anne Edwards, Esq. - AGO  
Jennifer J. Patterson, Esq. - AGO  
Harrison Mackey, Licensing Coordinator - DES

**\*\*\* RETURN THIS PAGE ONLY \*\*\***

**WILLIAM HARTLEY IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.**

**PLEASE RESPOND NO LATER THAN SEPTEMBER 3, 2002**

Please check the appropriate line and fill in the requested information below.

**APPEARANCE** On behalf of William Hartley,

I request to have a **formal hearing** scheduled in this matter.

I request to have a **prehearing conference** scheduled in this matter.

I would like to **meet informally** to discuss the issues in this matter.

**WAIVER OF HEARING** On behalf of William Hartley,

I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$6,889.00 paid to "Treasurer, State of New Hampshire" is enclosed.\*

**Pursuant to Env-C 203.05 please provide the following information:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

**RETURN THIS PAGE ONLY TO:**

**Department of Environmental Services  
Legal Unit  
6 Hazen Drive, P.O. Box 95  
Concord, NH 03302-0095**

- \* *If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*